

Defendants.


Case No. CIV-20-0919-F

The court is in receipt of plaintiff's objection to the Report and Recommendation. Doc. no. 33. The objection was received and filed of record on December 6, 2021, five days late. Plaintiff states that she is no longer housed in FCI Danbury; instead, she has been released to home confinement. Consequently, it appears that plaintiff is not entitled to the application of the prisoner mailbox rule to her filing. Because plaintiff's objection is not timely filed, the court finds that plaintiff has waived the right to appellate review of both factual and legal issues

contained in the Report and Recommendation. The court therefore accepts, adopts, and affirms the Report and Recommendation. The individual capacity claims brought under the Eighth Amendment against defendants S. Terrell and Traci Carney for injunctive relief in the form of the issuance of a CPAP machine will be dismissed as moot.¹

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Shon. T. Erwin (doc. no. 30) is **ACCEPTED, ADOPTED** and **AFFIRMED**. Plaintiff's individual capacity claim under the Eighth Amendment against defendants S. Terrell and T. Carney for injunctive relief in the form of the issuance of a CPAP machine, is **DISMISSED** as **MOOT**.

IT IS SO ORDERED this 9th day of December, 2021.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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¹ Even if plaintiff's objection were timely filed, the court would still accept, adopt, and affirm the Report and Recommendation. The magistrate judge's analysis with respect to plaintiff's remaining individual capacity claims for injunctive relief is correct. Plaintiff's objection is without merit.